SUBJECT INDEX

	Page
Petition for writ of certiorari	1-4
Summary statement of matter involved	1-2
Jurisdictional statement	2-3
Question presented	3
Reasons relied on for allowance of writ	3
Prayer for writ	3-4
Brief in support of petition for writ of certiorari	5-10
Opinions of courts below	5
Jurisdiction	5-6
Statement of the case	6
Specification of errors	7
Argument	7-10
Summary of Argument	7-8
Point A	8-9
Point B	10

TABLE OF CASES CITED

Angie B. Watson, The, 274 F. 218	2, 3, 10
Morse Dry Dock & Repair Co. v. U. S., 1 F. 2d 233	2, 6, 7
United States et al v. Carver et al, 260 U. S. 482	2, 6, 7

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1951

No._____

RED TOP SUPER MARKETS, INC., et al,

Petitioners,

v.

H. W. FINDLEY, Claimant of the Motor Vessel "QUEEN ANNE",

Respondent.

Petition for Writ of Certiorari

TO: The Honorable Frederick M. Vinson, Chief Justice of the United States and the Associate Justices of the Supreme Court of the United States:

Your petitioners respectfully show:

SUMMARY STATEMENT OF THE MATTER INVOLVED

This petition is directed to the judgment of the United

States Court of Appeals for the Fifth Circuit, which judgment reversed the final judgment of the Federal District Court, Southern District of Florida, In Admiralty, and from the order denying the petition for re-hearing entered in the United States Court of Appeals for the Fifth Circuit on June 19th, 1951. The petitioners in this matter were the libellants in the Court below and sought to libel the Motor Vessel "QUEEN ANNE" for supplies furnished the vessel and for services of the crew. The Commissioner appointed by the Federal District Court recommended that a decree be entered for the libellants upon the finding that one Captain Milton had the apparent authority to order supplies and hire a crew, therefore, entitling the libellants to a lien upon the vessel for the sums due them under the authority of **The Angie B. Watson,** 274 F. 218.

The United States Court of Appeals held that the case was governed by **The United States et al v. Carver et al,** 260 U. S. 482, and **Morse Dry Dock & Repair Co. v. United States,** 1 F. 2d 233, and that under said cases the libellants were under a legal duty to determine the true owner of the vessel and the actual authority of Captain Milton, and, applying such rule, reversed and remanded said case to the Federal District Court and denied the petitioners' petition for re-hearing.

JURISDICTIONAL STATEMENT

It is contended by the petitioners herein that the Supreme Court has jurisdiction to review the judgment herein questioned because said judgment is contrary to law and that the order denying the petition for re-hearing entered on June 19th, 1951 is contrary to previous decisions

of the United States Court of Appeals and of the Supreme Court of the United States and this petition for certiorari is brought within the time allowed by the rules of this Court.

QUESTION PRESENTED

The question herein presented is: Where a vessel is in possession of a custodian, who permits a person to go on board as a master, which master engages a crew, actually directs the activities of the crew in outfitting the vessel, and where the custodian acknowledges that such person is master of the vessel, must suppliers seek out the owner (who may be in parts unknown) before the credit of the vessel can be bound by such master?

REASONS RELIED ON FOR THE ALLOWANCE OF THE WRIT

Petitioners contend that the judgment of the United States Court of Appeals for the Fifth Circuit in the instant case is in conflict with the judgment of the Court in **The Angie B. Watson,** 274 F. 218, District Court D, Massachusetts, June 15th, 1921.

Wherefore, your petitioners pray that a writ of certiorari issue under the seal of this Court directed to the United States Court of Appeals for the Fifth Circuit, commanding said Court to certify and send to this Court a full and complete transcript of the record and of the proceedings of the said Court of Appeals had in the case numbered and entitled on its docket, No. 13355, H. W. Findley, Claimant of the Motor Vessel "QUEEN ANNE", Appellant, v. Red Top Super Markets, Inc., et al, Appellees,

to the end that this cause may be reviewed and determined by this Court, as provided for by the statutes of the United States; and that the judgment herein of said Court of Appeals be reversed by this Court and for such further relief as to this Court may seem proper.

Dated August 24th, 1951.

E. ALBERT PALLOT, W. F. PARKER and PALLOT, SILVER & MULLOY,

Counsel for Petitioners.

By_____

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1951

No._____

RED TOP SUPER MARKETS, INC., et al,
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v.

H. W. FINDLEY, Claimant of the Motor Vessel "QUEEN ANNE",
Respondent.

Brief in Support of The Petition for Writ of Certiorari

OPINION OF COURT BELOW

The opinion of the United States Court of Appeals for the Fifth Circuit is not yet reported and is dated May 10th, 1951. The order denying the petition for rehearing, not yet reported, is dated June 19th, 1951.

JURISDICTION

The date of the judgment to be reviewed is June 19th, 1951.

The facts as stipulated in the Court below, (T. 2-6),

would show that one Hans G. Milton went aboard the Motor Vessel "QUEEN ANNE" with the permission of Frank J. O'Connor, attorney and agent for the owner, H. W. Findley, and remained aboard, exercising apparent authority as a master, with the approval of Merrill-Stevens Dry Dock Co., custodian of the vessel; that as such apparent master, he ordered supplies and hired a crew. Subsequently, his authority was repudiated and the suppliers and crew members now seek to establish a lien against the vessel for the reasonable amount of their services rendered and supplies delivered prior to such repudiation. The Commissioner, who was appointed by the Federal Court, recommended that a decree be entered in favor of the libellants and said decree was entered in the District Court of the United States, Southern District of Florida, In Admiralty, on April 28th, 1950. Subsequent thereto, the owner of the Motor Vessel "QUEEN ANNE" perfected an appeal to the United States Court of Appeals for the Fifth Circuit, wherein the decree of the Federal District Court was reversed and the cause remanded. The United States Court of Appeals based its decision on the cases of **The United States et al v. Carver et al**, 260 U. S. 482, and **Morse Dry Dock & Repair Co. v. United States**, 1 F. 2d 233, (Tr. 31, 32, 33); that by such a holding, the decision of this United States Court of Appeals is in conflict with the decision rendered by the said Court in **The Angie B. Watson**, heard in District Court D of Massachusetts in 1921, and reported in 274 F. 218.

STATEMENT OF THE CASE

This has already been stated in the preceding petition under pp. 1 and 2, which is hereby adopted and made a part of this brief.

SPECIFICATION OF ERRORS

1. The United States Court of Appeals for the Fifth Circuit erred in holding that the decisions in **The United States et al v. Carver et al** and **Morse Dry Dock & Repair Co. v. United States,** (supra), were controlling in the instant case.

2. The Court erred in holding that the suppliers were bound to make inquiry into the actual authority of the one ordering supplies, when such one was aboard the vessel with permission of the custodian of the vessel, and openly exercising authority as the master of the vessel.

ARGUMENT

SUMMARY OF ARGUMENT

Point A. The decisions rendered in **The United States et al v. Carver et al** and in **Morse Dry Dock & Repair Co. v. United States,** (supra) were based primarily upon the fact that the vessels were on charter and that the suppliers of said vessels could, upon the exercise of reasonable diligence, ascertain the terms of the charter party. The vessel in the present case was not under charter and, therefore, the suppliers could not have, by the exercise of reasonable diligence, found out anything more than they already knew.

Point B. Where the custodian of a vessel and the agent of the owner of the vessel clothe a person with the apparent authority of a master and permit him to board the vessel and exercise the powers afforded a master, then the suppliers may rely upon such apparent authority and are not bound by the secret instructions that may constitute the actual authority. That, when relying upon such apparent authority, the suppliers are entitled by law to a

lien upon the vessel for the reasonable value of the supplies and services.

POINT A

There is an elementary distinction between the two cases relied upon by the Court of Appeals and the instant case. The ships involved in both cited cases were owned by the United States government and were under charter. These ships were under the complete supervision and control of the charterers and the charterers' representatives and the suppliers and repairmen were actually and knowingly doing business with the charterers and the charterers' representatives and not the owner, which was the United States government. Whereas, in the instant case, there was no charter involved and the suppliers were doing business with the owner's authorized representative.

It was made to affirmatively appear in both cited cases that the owner, the United States, was not chargeable with any responsibility for placing the contracting parties in a position where they could exercise the apparent authority of owners' representatives, whereas in the case at bar, it is undisputed that the owner, acting first by and through his attorney and agent, and then his custodian, not only placed Captain Milton in a position where he could exercise the apparent authority of a master, but knowingly permitted him to maintain such a position for a period of approximately two weeks, without taking any steps whatsoever to repudiate him.

The opinion of the Court in **The United States et al v. Carver et al,** (supra), was that the owners of the vessel did nothing to clothe someone else with the apparent

authority to act for them, whereas in the instant case the owner of the vessel, his agent and custodian affirmatively committed acts that clothed Captain Milton with his apparent authority to act.

It is respectfully submitted that although the facts in the cited cases relied upon by the Court of Appeals are vastly different from those in the case at bar and that while the decisions in the cited cases do not apply directly to the case at bar, the reasoning behind those decisions, if applied, would necessarily result in an opposite decision in the instant case. In applying the cited cases the Court of Appeals in its opinion said: "To exercise reasonable care and diligence in order to ascertain whether the person ordering the supplies and services for the vessel has authority to do so is a burden which the law imposes upon the suppliers and materialmen and any other rule would encourage laxity in our admiralty laws and place a premium upon fraud and collusion between dishonest masters and those who extend credit to a vessel." Such law, when applied to the cited cases, is well founded and the reasoning behind the decisions is sound. Therefore, it follows and makes good sense that if similar reasoning were applied to the instant case, that is, to allow the owner to sit back and do nothing when he knew that a qualified master had taken command of his vessel, was making repairs, had engaged a crew, and was ordering supplies, would place a premium upon fraud and collusion and encourage dishonest masters and owners to take advantage of credit extended. To hold otherwise would be in restraint of trade and defeat the whole purpose of the law that authorizes libel in admiralty, for the suppliers would be required to contact the owner personally, although his whereabouts may be unknown, while the ship is in dire need of supplies or repairs.

POINT B.

The rule of law to be properly applied in the instant case is one of agency and the question to be determined is whether or not the owner of the vessel and his agents permitted Captain Milton to do and act as though he were truly acting within his scope of authority and if they did permit such actions and assisted in clothing him with such apparent authority, then the decree of the Federal District Court in allowing the lien was proper, based upon a long line of decisions, and particularly upon **The Angie B. Watson,** 274 F. 218.

To follow the decision of the United States Court of Appeals for the Fifth Circuit in the instant case would be to do away with the doctrine of apparent authority and it would be possible for owners of vessels to be bound to the suppliers only when such suppliers investigated the actual authority of the one acting for the owner. Such a decision is in conflict with old and established legal precedents and would act as a restraint upon trade.

It is therefore respectfully submitted that this case is one calling for the exercise by this Court of its supervisory powers, by granting a writ of certiorari and thereafter reviewing and reversing said decision.

E. ALBERT PALLOT, W. F. PARKER and PALLOT, SILVER & MULLOY,

Counsel for Petitioners.

By_____

Receipt of a copy of the foregoing Petition and Brief, together with Transcript of Record in the Court below and Petition by Appellees for Re-hearing is hereby acknowledged.

JOHN P. BOOTH and
FRANK J. O'CONNOR,
Counsel for Respondent.

By_____